



The Attorney General of Texas

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Honorable John J. Kavanagh, M.D.
Commissioner
Texas Department of Mental Health
and Mental Retardation
Box 12668, Capitol Station
Austin, Texas 78711

Opinion No. MW-96

Re: Whether facilities of the
Department of Mental Health and
Mental Retardation are authorized
to pay application fees to the
Health Facilities Commission for
projects donated to the
Department.

Dear Dr. Kavanagh:

You have requested our opinion regarding whether facilities of the
Department of Mental Health and Mental Retardation are authorized to pay
application fees to the Health Facilities Commission under article 4418h,
V.T.C.S.

The purpose of article 4418h, the Health Planning and Development
Act of 1975, is to insure that

appropriate health planning activities be undertaken
and implemented and that health-care services and
facilities be provided in a manner that is cost
effective and that is compatible with the health-care
needs of the various areas and populations of the
state.

V.T.C.S. art. 4418h, §1.02. To achieve this purpose, every "person" must
obtain a certificate of need or an exemption certificate from the Health
Facilities Commission before commencing any project to:

- (1) substantially expand a service currently offered
or provide a service not currently offered by the
facility;
- (2) construct a new facility or change the bed
capacity of an existing facility;
- (3) modify an existing facility;

- (4) convert a structure into a health-care facility; or
- (5) organize an HMO which requires a new or modified facility.

V.T.C.S. art. 4418h, § 3.01(a). An applicant is eligible for an exemption certificate under certain circumstances, as, for example, when "in the case of modification of an existing facility the total cost of the proposed modification will not exceed \$100,000." V.T.C.S. art. 4418h, § 3.02(a)(3). Otherwise, for any project within the terms of section 3.01, the applicant must seek a certificate of need accompanied by the requisite application fee, which ranges from \$25.00 to \$3,500.00, depending upon the type and size of the project. Sections 3.04, 3.05.

You state that certain capital improvement projects at the Department of Mental Health and Mental Retardation are undertaken by the volunteer councils of the various facilities of the department. No appropriated funds are used in these projects, but they are donated to the department upon completion.

Section 3.04(b) of article 4418h states that "[e]ach application for a certificate of need must be accompanied by the required application fee," and section 3.01(a) directs that "each person" obtain a certificate of need or an exemption certificate for any proposed project listed therein. Section 1.03(14) defines "person" as

an individual, sole proprietorship, charity, trust, estate, institution, group, association, firm, joint venture, partnership, joint stock company, cooperative, corporation, the state or a political subdivision or instrumentality of the state, the federal government or a political subdivision or instrumentality of the federal government, any receiver, trustee, assignee, or other similar representative or any other legal entity.

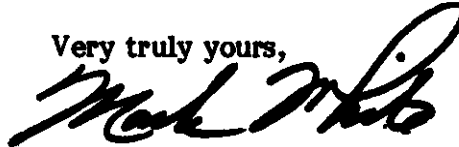
It is clear that "person" includes a volunteer council of a facility of the Department of Mental Health and Mental Retardation. It is therefore our opinion that a volunteer council is required to pay the requisite fee to the Health Facilities Commission in order to undertake a project contemplated by article 4418h. If, however, the Department can gain a benefit by contracting with the volunteer council to pay the application fee, then the Department is authorized to pay the fee if it has available funds. Thus, for example, if the volunteer council agreed to donate a swimming pool or recreation building to the Department on the condition that the Department pay the application fee, the Department could enter into such an agreement.

S U M M A R Y

A volunteer council of a facility of the Texas Department of Mental Health and Mental Retardation is required to pay the appropriate fee to the Health Facilities Commission in order to undertake a project contemplated by article 4418h, V.T.C.S. The

Department of Mental Health and Mental Retardation may agree to pay the application fee on behalf of the council, if payment of the fee results in a benefit to the Department.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark White", written in a cursive style.

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